

In the Matter of the Petition for Reinstatement of:

MURAT OKAY GEMICI

Petitioner.

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) Case No. 27-2013-231342
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) OAH No. 2014030758
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The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

IT IS SO ORDERED **October 2, 2014.**

By: Barbara Yaroslavsky
Barbara Yaroslavsky, Chair
Panel A

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for Reinstatement of:

MURAT OKAY GEMICI,

Petitioner.

Case No. 27-2013-231342

OAH No. 2014030758

PROPOSED DECISION

Beth Faber Jacobs, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on August 11, 2014.

Joseph F. McKenna III, Deputy Attorney General, Department of Justice, State of California, represented the Office of the Attorney General.

Frederick M. Ray, Attorney at Law, represented petitioner, Murat Okay Gemici, who was present throughout the proceeding.

The matter was submitted on August 11, 2014.

FACTUAL FINDINGS

Background and License History

1. On August 13, 1999, the Medical Board of California (the board) issued to petitioner, Murat Okay Gemici, Physician's and Surgeon's Certificate No. A 69511, which authorized petitioner to practice medicine in California.

2. On May 30, 2003, the board issued a citation against petitioner for failing to notify the board within 30 days after he was subject to a Court Martial and convicted of military crimes in 2002. The citation fine was \$1,000. He paid the fine several years later, in October 2011.

3. On August 12, 2003, the board's executive director filed an accusation, and on September 12, 2003, filed a first amended accusation against petitioner's medical license. Numerous charges were alleged:

Conviction of a crime: In 2002, following a military General Court Martial, petitioner was convicted of violations of the Uniform Code of Military Justice.

Violation of drug statutes: Petitioner wrote prescriptions for patient O.M. with the intent of using the drugs himself.

Unlawful use of drugs: Petitioner illegally used Oxycontin, Morphine, Percocet, Lortab, and became an addict.

Dishonesty: Petitioner stole medical items from a naval hospital.

Petitioner had a mental illness that impaired his ability to safely practice medicine.

Discipline by another state: Petitioner's Nebraska medical license was revoked, effective August 12, 2003.

4. The board properly served the accusatory pleadings on petitioner. He did not file a notice of defense or otherwise request a hearing. A default was taken; the board found that the charges alleged were true, and it revoked petitioner's certificate to practice medicine in California, effective April 15, 2004.

The Petition for Penalty Relief

5. On February 13, 2013, petitioner filed a petition for penalty relief with the board and requested reinstatement of his revoked certificate.

6. The petition included petitioner's narrative statement prepared under penalty of perjury. In it, petitioner stated that the loss of his California medical license ten years ago caused him to reassess his life. He wrote about having become a drug addict; the downward spiral of his life; convictions for domestic violence and disturbing the peace that he incurred after his revocation; and his difficult path toward recovery, which included participation in numerous in-patient and out-patient treatment programs. He included letters of recommendation from licensed physicians (including his Alcoholics Anonymous sponsor) and other documents in support of reinstatement.

7. This hearing followed.

Evidence Presented at the Hearing

8. Petitioner was born in Istanbul, Turkey, and he came to the United States at the age of three. He is now 43 years old. Petitioner grew up on the east coast and graduated from high school. In 1993, he received his bachelor's degree in biology and psychology

from Regis University in Colorado. Thereafter, he attended medical school at Creighton University in Omaha, Nebraska, on a military scholarship. After graduating from medical school in 1998, he completed an internship in family medicine in Pittsburgh, Pennsylvania. He did not complete a residency. To fulfill his scholarship obligation, petitioner moved to the San Diego area to “attach” to the Marine Corps, Department of Navy. He became the Medical Director of Camp Pendleton’s medical clinic and held this position for four years.

9. Petitioner testified about his path to becoming a drug addict. He drank alcohol a little in high school. In medical school, he began to abuse drugs, including Ritalin he had been prescribed, and cocaine, which he obtained illegally from his brother. To be the “cool guy,” petitioner gave away cocaine during parties. He never sold drugs. His medical school began to notice signs of substance abuse, and the dean asked him to get help. Petitioner started seeing a therapist weekly and taking drug tests at the appointments. In 1999, during his internship, he also had six random drug tests. Petitioner was able to hide his substance abuse, and all of the tests were negative for drugs or alcohol.

10. In 2000, after he became licensed as a physician and took the position at Camp Pendleton, petitioner had an accident while he was intoxicated and riding a sport vehicle in the ocean. He fractured his leg and was prescribed opiates. He initially took the drugs as prescribed, but his use escalated. In his words, he “malingered and cheated to get more” Percocet and Lortab. He self-prescribed. Opiates became his “drug of choice,” and he became addicted. He worked off-base as a physician without the military’s permission, wrote about 50 prescriptions for himself and diverted drugs by splitting them with an indigent civilian who had chronic pain. He stole supplies from the Navy to give her, and he paid her for her drugs. His actions led to his Court Martial and discharge from the military.

11. Petitioner made overtures at getting help with his addiction, but in his words, he really “had no interest in getting sober.” He participated in treatment programs at Rancho L’Abri in California; the Hazelden physician health program in Minneapolis; Scripps La Jolla; and UCSD.¹ In approximately 2002, during one of his inpatient treatments, he was diagnosed as having bi-polar disorder.

12. Petitioner’s need to access illicit drugs continued to be greater than his desire to recover from the addiction. He had no control over his use of opiates, and his need for them consumed him “morning, noon, and night.” During one period of attempted sobriety and withdrawal, he became so desperate for opiates that he intentionally injured himself by pouring hot oil on his body from his chest down; his actions caused second degree burns, placed him in the burn unit for two months, and required skin grafts.

13. Petitioner was married and had children. At some point, his wife moved to Nebraska. To support his family, petitioner followed her, and he accepted a position in

¹ The petition lists five inpatient treatment programs petitioner attended at various dates between 2001 and 2003 and six outpatient treatment programs petitioner attended between 2004 and 2013.

Nebraska as medical director of the Douglas County jail. He did not tell the Nebraska authorities about his Court Martial or why he left his position with the Navy. He hoped to be employed “long enough” to earn some money before the authorities learned of his addiction. He continued to self-prescribe. He was eventually arrested and brought to the very jail where he had served as medical director. Petitioner was convicted of self-prescribing and sentenced to serve time in jail. He was sober while in jail. He remained in the Douglas County jail until his release over six months later.

14. While he was in jail in Nebraska, petitioner’s licenses to practice medicine in Nebraska and California were revoked by the boards of those states.

15. After his release from jail, petitioner could not remain sober. He repeatedly became intoxicated around his children. His wife took the children and left. Petitioner testified that he did not blame her; as he acknowledged, “intoxicated people should not be around children.” Petitioner and his wife divorced.

16. Petitioner’s father set him up in a half-way house in Houston. Petitioner lived there for a few months and again became sober. His sobriety was short-lived. He moved to Denver, Colorado, and relapsed. As he explained, he had a “wishy-washy commitment” to sobriety.

17. In 2005, while attending an Alcoholics Anonymous (AA) meeting, petitioner met a twenty-year old woman, Amber, who was actively using drugs. They began to have a relationship. Together, they injected cocaine and abused drugs. At another low point, on May 28, 2005, petitioner assaulted Amber while they were both under the influence.

On May 31, 2005, in *People of the State of Colorado v. Gemici*, Case No. 2005M4179, petitioner pled guilty and was convicted of engaging in domestic violence (“assault in the third degree”), a misdemeanor. The court placed petitioner on supervised probation for two years; it ordered that he complete a 36 week domestic violence course and pay fines and fees; it issued a restraining order, and it suspended sentence of jail time for 180 days subject to petitioner’s satisfactory completion of probation. By April 2007 petitioner satisfactorily completed probation, and probation terminated.

18. Respondent’s drug and alcohol abuse continued to create problems in his life. In 2006, he was under the influence and stole a lawnmower from a home improvement store. On October 21, 2006, in *People of the State of Colorado v. Gemici*, Case No. 06CR03039, the court accepted petitioner’s stipulation for “supervised deferred judgment and sentence.” On October 21, 2008, the court found that petitioner satisfactorily completed the terms of supervised probation. No judgment was entered; the allegations did not result in a conviction; and the matter was dismissed with prejudice.

19. Following his arrest for stealing the lawnmower, petitioner tried to become more actively involved in the 12-Step programs of AA and Narcotics Anonymous (NA). He characterized this period as a “tipping point” in his life; he wanted a change from the life of

addiction. He realized if he did not become clean and sober, he ran the risk of never seeing his children. He wanted to become a “human being” again and to “contribute to the community instead of stealing” from it. For the first time, petitioner began to want sobriety for himself and not for others. He began to make changes in how he worked toward recovery. He began to volunteer to lead 12 Step meetings. He started working the 12 Steps. He began to spend more time with “program people,” to “do service” in connection with his 12 Step programs, and to do other volunteer work. He sought treatment and paid to see a counselor and a psychiatrist. He was prescribed mood stabilizers and antidepressants, and he took them as prescribed.

20. In 2006, at the suggestion of Shannon, the woman who would later become his wife, he enrolled in massage therapy school.

21. Despite these new efforts, between 2006 and 2010, petitioner achieved only short periods of sobriety, never more than a few months at a time. At one point in 2010, while under the influence of drugs and alcohol, he stole some small items from a computer store. He pled guilty to disturbing the peace. He was ordered to serve one year unsupervised probation and perform 50 hours of community service.

22. Petitioner became licensed as a massage therapist in 2010 and began working in the field. He married Shannon in November 2011. According to petitioner, although he continued to have relapses, his attitude was different; for the first time, petitioner began to feel guilty about his substance use and losing sobriety. He became more honest during meetings and in working with a sponsor. This process eventually led to his current sobriety, which he achieved on May 29, 2012.

23. Petitioner testified about his sobriety and the importance of recovery in his life. He said that he realized he “lost everything” he “ever cared about” - his kids, wife, occupation, and dignity –because of his addiction. Although he started working the 12 Steps over the years and had worked with several sponsors, he knew he needed to do it differently. He began working with a new sponsor, Larry Schafer, a physician with 24 years sobriety. Dr. Schafer continues to be his sponsor.

24. Petitioner is re-doing the 12 Steps and is on Step 4, which calls for making a “searching and fearless moral inventory.” Petitioner considers this a “gigantic” step. His current sobriety of little more than two years is the longest length of sobriety he has ever had. When asked what was different this time, petitioner stated that he now embraced his recovery through “the program” (AA and NA) in a way he never had before; he has lost 80 pounds and makes health a priority; he gets proper sleep; he surrounds himself with healthy people; he has also embraced Yoga and the church. He does volunteer work and has helped Colorado flood victims clean their homes from debris about once a month for the past year. For over two years he has worked with the Denver Rescue Mission in the kitchen. Last week he helped the city by volunteering with others to pull noxious weeds.

25. Petitioner shared that he is remorseful and has regrets for the “terrible things” he did “to get drugs.” “Things I’m not proud of,” such as “stealing from friends” and his parents, showing abysmal judgment with a patient in 2002 that in part led to his Court Martial, and engaging in domestic violence. According to petitioner, the support of his friends and family has helped him get to his current place in recovery.

26. Petitioner has been licensed as a massage therapist in Colorado for four years, and his license has been in good standing throughout that period. He has become a personal trainer and fitness specialist. He also owns a seasonal organic landscape business and a retail internet store.

27. Despite the years that have passed, petitioner wants to resume the practice of medicine. He has tried to keep up with medicine by on-line reading, taking over 30 hours of continuing medical education, and speaking with physicians in AA meetings. He readily acknowledged that he would need additional training before re-entering medicine because he is “ten years behind in treating patients.” He would like to do a residency in psychiatry; he chose psychiatry because psychiatrists do not prescribe opiates and he could, in his estimation, practice without a DEA registration. He said he was willing to “do anything” and would accept any probationary terms to become a physician again. To petitioner, the practice of medicine is the only profession that satisfies his scientific curiosity and desire to help others.

28. Petitioner and Shannon recently divorced because she had an affair. The divorce did not involve issues related to drugs or alcohol and did not involve domestic violence. Petitioner has moved to a small town in Colorado for a more contemplative life. He still sees his psychiatrist once a month for refills of his mood stabilizer and antidepressants. He is not currently in therapy. His last random biological fluid test was in March 2014, and it was negative.

29. Larry A. Schafer, M.D., submitted two declarations in support of petitioner’s request for reinstatement and testified at the hearing. Dr. Schafer recently retired from the practice of medicine and had practiced as an oncologist and hematologist. A recovering alcoholic, Dr. Schafer has been clean and sober for 24 years. He felt he was in a good position to judge petitioner’s “level of recovery” because prior to becoming sober, Dr. Schafer’s medical license was twice placed on probation in Colorado, and he was summarily suspended from two hospitals because of his addiction. He met petitioner in an AA meeting about six years ago and has been his sponsor for the past several years. Dr. Schafer paid for his own flight from Colorado to testify on petitioner’s behalf.

Dr. Schafer explained that before he wrote his letters of support, he asked petitioner to show him all the documents filed against him by the board and his records concerning his convictions. Petitioner provided him with the documents. None of the documents contained information that was new to Dr. Schafer; petitioner had told him all of this information before.

Together with Dr. Nathan Pollack, M.D., Dr. Schafer operated a weekly AA meeting for physicians that petitioner attended in Denver, Colorado. Drs. Schafer and Pollack verified that between 2005 and September 2013, petitioner attended 86 formal professional AA meetings they ran. Dr. Schafer wrote, in part:

I'm convinced that Murat has regained his life and is functioning as a productive, law abiding member of society. It was an arduous, prolonged trip for him. He is honest, ethical, caring and eager to help others. Over the years, he has matured and learned to accept personal responsibility for his actions. It was a joy to serve as his 12-Step sponsor.

Dr. Schafer asked that the board give petitioner "another chance." He considers petitioner "contrite" and stated that petitioner showed regret for his actions that were clouded by drug use. He saw gradual and steady changes in petitioner and has seen him "embrace sobriety." He emphasized that no one can guarantee or promise continued sobriety, but he has confidence in petitioner and the level of his commitment to sobriety; he believes petitioner has a "low risk" of relapse if he continues with his current program - rigorous exercise, honesty, meetings, and step work.

Even though petitioner has moved to another city, Dr. Schafer and petitioner continue to text and talk, and they often meet for lunch.

30. Petitioner's application also included letters of recommendation prepared under penalty of perjury by Dr. Pollack and Wallace C. White, M.D. In his declaration, prepared in 2013, Dr. White stated that he has known petitioner since 2007 and is familiar with "his history of addictions and legal problems." He wrote, in part:

I can bear witness that in the time I have known Dr. Gemici he has been faithful and dedicated in following 12 step programs of recovery for addictions to alcohol and narcotics. He has been clear thinking in awareness that failure to continue in recovery will be very destructive to his personal and professional life. . . . I would trust Dr. Gemici to be physician to me.

Dr. Pollack, who ran the physician's AA meetings with Dr. Schafer, also wrote a declaration in support of petitioner's request for reinstatement. Dr. Pollack explained that he has been in recovery about 25 years and has known petitioner about seven years. He praised petitioner's "sincerity" and "increasing directness and persistent efforts at living a full and honest life." He observed that petitioner "attended recovery groups and activities with increasing regularity and spontaneous interaction." He supports petitioner's efforts to regain his medical license in California.

31. The Office of the Attorney General opposed petitioner's petition for reinstatement of his medical license. The deputy attorney general argued that petitioner was

in the “infancy” of his sobriety and that petitioner had not been sufficiently candid or transparent in the application process to warrant reinstatement.

LEGAL CONCLUSIONS

The Burden and Standard of Proof

1. In a proceeding for the restoration of a license, the burden at all times rests on the petitioner to prove that he has rehabilitated himself and that he is entitled to have his license restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) A person seeking reinstatement must present strong proof of rehabilitation, and the showing of rehabilitation must be sufficient to overcome the former adverse determination. The standard of proof is clear and convincing evidence. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d, 308, 315-316.)

Statutory and Regulatory Authority

2. Business and Professions Code section 2307 provides in part:

(a) A person whose certificate has been . . . revoked . . . may petition the board for reinstatement

(b) The person may file the petition after a period of not less than the following minimum periods have elapsed from the effective date of . . . the decision ordering that disciplinary action:

(1) At least three years for reinstatement of a license surrendered or revoked for unprofessional conduct,

[¶] . . . [¶]

(c) The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from physicians and surgeons licensed in any state who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.

[¶] . . . [¶]

(e) The . . . administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary

action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. . . .

Relevant Factors in Determining Rehabilitation

3. Rehabilitation is a state of mind. The law looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration. (*Hightower v. State Bar* (1983) 34 Cal.3d 150, 157.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) The amount of evidence of rehabilitation required to justify admission varies according to the seriousness of the misconduct at issue. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1086.)

4. The mere expression of remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is presented by sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 987, 991.)

5. When evidence of substance abuse is coupled with evidence that the abuse was addictive in nature and contributed to misconduct, and when the individual demonstrates a meaningful and sustained period of successful rehabilitation, such evidence should be considered as a factor in mitigation of disciplinary sanctions. Recovery, or rehabilitation, naturally involves consideration of the individual's history of substance abuse-related behavior, including any substance abuse-related misconduct. The requisite length of time to show meaningful and sustained rehabilitation will vary from case to case. (*In re Billings* (1990) 50 Cal.3d 358, 367.)

6. Before an addict can return to practice, he must present reliable evidence that his long-standing addiction is permanently under control and that he has undergone a meaningful and sustained period of successful rehabilitation. His own verbal assurances that he will never drink or take drugs again are not sufficient proof that he has overcome a history of alcohol or drug abuse. (*Walker v. State Bar* (1989) 49 Cal.3d 1107, 1118.)

Evaluation

7. Petitioner has a long history of addiction that caused him to inflict significant harm on himself and others. His rehabilitation must be judged within the context of that history. Petitioner has abstained from alcohol and drugs since May 2012. Given his history, that is a relatively short period of time.

The Office of Attorney General argued the petition should be denied because petitioner had not been sufficiently forthcoming in his petition for penalty relief because he did not include a reference in the petition to his 2006 arrest at the home improvement store.

The argument lacked merit. The board's petition for penalty relief asked for information about events that occurred "since the effective date of your last Medical Board of California administrative action." Petitioner correctly answered "yes" to whether he had "been placed on criminal probation or parole," and he listed the domestic violence and disturbing-the-peace convictions. He answered "yes" to whether he had been "convicted of any criminal offence," and "yes" to whether he had become "addicted to the use of narcotics or controlled substances." He listed the two convictions that occurred after his revocation, the multiple residential and day treatment programs he tried over the past 13 years, and he included a narrative about his path to recovery. His 2006 arrest resulted in a deferred judgment that was never entered; it was dismissed and did not constitute a conviction. (*Boyll v. State Personnel Board* (1983) 146 Cal.App.3d 1070, 1074.) The petition did not ask if petitioner had been arrested for any crime that did not result in a conviction. His testimony included a parade of horrors regarding the effect of his addiction on himself and others. He appeared candid, open, and honest in his petition, his testimony, and in his presentation of the evidence. The argument that petitioner was not sufficiently transparent in the petition is not sustained and is not a basis for denying the petition.

That said, petitioner did not provide sufficient evidence of sustained rehabilitation necessary to warrant the public's trust in reinstating his certificate to practice medicine at this time.

Petitioner's testimony reflected candor and some insight into his struggles with addiction and his efforts to recover from its stranglehold. His repeated brushes with the law and his convictions stemmed from his addiction. His addiction impacted his family, his practice of medicine, and at least one patient. His addiction was so intense that at one point it even caused petitioner to self-inflict second degree burns from hot oil in an effort to gain access to opiates. His repeated attempts at sobriety included five in-patient treatment programs and six out-patient treatment programs. Without question, petitioner's addiction was, for much of his life, overwhelming and all-consuming. In May 2012, after over 13 years of active addiction, petitioner finally became sober for more than a few months. His current path shows effort, resolve, and commitment. He is to be commended for his past two years of sustained sobriety; it is the longest period of sobriety he has ever achieved. But it is still new for petitioner.

Given the totality of petitioner's history of addiction and the difficulties he has faced in achieving sustained sobriety, it is far too early to determine whether his efforts will result in long-term abstinence and recovery. The board's highest priority in licensing and disciplinary matters is protection of the public. "Where rehabilitation and protection are inconsistent, protection shall be paramount." (Bus. & Prof. Code, § 2229, subs. (a) and (c).) Petitioner's relatively short length of sobriety renders his current level of rehabilitation inconsistent with public protection.


Petitioner is encouraged to continue his path of sobriety, personal growth, and recovery, and, if he continues to desire reinstatement as a physician, to reapply when he has a greater period of sustained sobriety and demonstrated rehabilitation. In light of all the

evidence, however, it is not be in the public's interest to permit petitioner to return to the practice of medicine at this time. His petition should be denied.

ORDER

The petition for penalty relief filed by Murat Okay Gemici to reinstate his certificate to practice medicine is denied.

DATED: September 9, 2014


BETH FABER JACOBS
Administrative Law Judge
Office of Administrative Hearings